

Exhibit 105

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
MASTER DOCKET 18-MD-2865 (LAK)
CASE NO. 18-CV-09797

IN RE:)
)
)
CUSTOMS AND TAX ADMINISTRATION OF)
THE KINGDOM OF DENMARK)
(SKATTEFORVALTNINGEN) TAX REFUND)
SCHEME LITIGATION)
)
)

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REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL
EXAMINATION OF
CHRISTIAN EKSTRAND - VOLUME I
DATE: May 6, 2021

REPORTED BY: CHARLENE FRIEDMAN, CCR, RPR, CRR

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<p>1 THE WITNESS: Sorry.</p> <p>2 Q Did Accounting 2 have any control 3 functions?</p> <p>4 MR. WEINSTEIN: Objection to form.</p> <p>5 A You can say that the way we were 6 organized, it is an accounting department. 7 But they were responsible for controlling and 8 checking refunds of dividend withholding tax.</p> <p>9 Q When you say "they were responsible 10 for controlling and checking refunds of 11 dividend withholding tax," what do you mean?</p> <p>12 A I mean that when you claim refunds 13 of dividend withholding tax, you must meet 14 certain conditions and you have to document 15 those requirements in connection with your 16 claim for refund. But Accounting 2 checks 17 with the claim board, including checking of 18 the documents, very fine documenting that you 19 are the beneficial owner or included in the 20 claim or the application for refund.</p> <p>21 And the application of claim was 22 rejected if the requirements were not met.</p> <p>23 Q During the time period of January 24 2012 to August 2015, who was the head of 25 Accounting 2?</p>	<p>1 A As I remember it, Lisbeth R□mer was 2 the head of the department until October '13, 3 approximately, when she retired, and Dorthe 4 Pannerup took over the position.</p> <p>5 D-O-R-T-H-E, and last name, P-A-N-N-E-R-U-P.</p> <p>6 Q Do you know about how many 7 employees Accounting 2 had during that 8 period?</p> <p>9 A I don't know for the entire 10 department exactly, but probably about a 11 man count of 20, but if you're talking 12 specifically about Accounting 2, it was five 13 or six people.</p> <p>14 Q Did that stay consistent over the 15 2012 to 2015 time period?</p> <p>16 A Yes, that was during that period. 17 It could vary, too, because people might have 18 stopped working and new employees come in.</p> <p>19 Q Were there budget cuts to 20 Accounting 2 during the period 2005 to 2015?</p> <p>21 A Could you repeat the period? 22 Apparently I got that wrong.</p> <p>23 You were asking about which period?</p> <p>24 Q 2005 to 2015.</p> <p>25 A Okay. I don't know about the</p>
<p>1 specific budget cuts. But generally, there 2 were budget cuts in the tax agency during 3 that period.</p> <p>4 Q Were there complaints from 5 personnel in Accounting 2 about a lack of 6 resources?</p> <p>7 MR. WEINSTEIN: Objection to form. 8 Are you talking about for a ten-year period?</p> <p>9 MR. SCHOENFELD: Correct.</p> <p>10 MR. WEINSTEIN: Objection to form.</p> <p>11 A I don't think I can answer 12 specifically, but as in all instances of 13 SKAT, there was some frustration about 14 resources during the period.</p> <p>15 Q Who is Sven Nielsen?</p> <p>16 A He was an employee of Accounting 2.</p> <p>17 Q During what time period?</p> <p>18 A He was employed during the period 19 you're asking about. If you want the 20 specific period, I don't have that, but I can 21 look it up.</p> <p>22 Q During that time period, what were 23 Sven's responsibilities?</p> <p>24 A He was responsible for handling the 25 reclaims and for entering them into the 3S</p>	<p>1 system.</p> <p>2 Q Was anyone other than Sven Nielsen 3 responsible for handling reclaims?</p> <p>4 A Well, there were other employees. 5 There was a person called Laurits Cramer who 6 was -- generally, he was opening the mailing 7 and sorting it.</p> <p>8 And there were two ladies who did 9 some inputs in the system, but it was 10 generally Sven who did it.</p> <p>11 Q Was Sven's work in processing 12 reclaims subject to any auditing?</p> <p>13 MR. WEINSTEIN: Objection to form.</p> <p>14 A I don't understand the question, so 15 could you ask it again? Rephrase it, please?</p> <p>16 Q Did anyone in Accounting 2 or in 17 Payments and Accounting have responsibility 18 for auditing Sven's work in approving or 19 rejecting reclaim applications?</p> <p>20 MR. WEINSTEIN: Objection to form.</p> <p>21 A I don't know if anybody was 22 responsible for auditing Sven's work, but 23 when you're talking about payments of 24 disbursements, there's a functional 25 separation as always.</p>

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<p style="text-align: center;">Page 42</p> <p>1 MR. WEINSTEIN: Objection to form. 2 A There were no written procedures, 3 but work was being done to write the 4 procedure.</p> <p>5 Q When was that work being done to 6 write procedures?</p> <p>7 A In the course of 2015.</p> <p>8 Q Do you know when in the course of 9 2015 the project of writing down procedures 10 began?</p> <p>11 A No.</p> <p>12 Q Do you know why that project was 13 begun?</p> <p>14 A As far as I remember, the comments 15 were made in earlier reports from internal 16 audit. The opinion was expressed that 17 written rules of procedure had to be made.</p> <p>18 Q Do you recall which internal audits 19 made that comment?</p> <p>20 A I don't quite understand. We only 21 have one internal audit department.</p> <p>22 Q Do you recall the dates of the 23 internal audits that expressed the opinion 24 that written rules of procedure needed to be 25 created?</p>	<p style="text-align: center;">Page 43</p> <p>1 A I think there was a report, an 2 audited report from 2013 recommending that 3 written guidelines be made, but I'm not quite 4 certain.</p> <p>5 Q Do you know why it took two years 6 to start the project of making written 7 guidelines?</p> <p>8 A No.</p> <p>9 Q So I'd like to go field by field on 10 Exhibit 3016 and understand the process for 11 reviewing these applications. Actually, let 12 me take a step back.</p> <p>13 Can you just describe for me, step 14 by step, what the process was for reviewing 15 and approving a dividend withholding tax 16 refund application in the period of 2012 to 17 2015?</p> <p>18 MR. SCHOENFELD: Ms. Gregerson, do 19 you want me to repeat that?</p> <p>20 THE INTERPRETER: I'm sorry. Yes, 21 but we just can't hear you.</p> <p>22 MR. SCHOENFELD: Sure.</p> <p>23 Q Can you describe -- can you 24 describe for me, step by step, the process 25 for reviewing and approving a dividend</p>
<p style="text-align: center;">Page 44</p> <p>1 withholding tax refund application in the 2 period 2012 through 2015?</p> <p>3 A Yes. As I said before, when mail 4 is received and opened, there's a set of eyes 5 looking to check whether it's a Danish or a 6 foreign application, and whether the 7 documents I described before accompanied the 8 application.</p> <p>9 So when the mail has been put into 10 the different files, you might say, then you 11 check again whether the 12 documentation -- you're checking the 13 documentation again to see if the form has 14 been correctly filled in. You look at the 15 form to check whether it's the beneficial 16 owner who submits the reclaim or whether he 17 or she is represented by a reclaim agent.</p> <p>18 If a reclaim agent is used, we 19 check whether there's a power of attorney 20 authorizing the agent to reclaim the dividend 21 withholding tax.</p> <p>22 Then we check whether there's a 23 declaration of residence for tax purposes 24 stating which country we're talking about.</p> <p>25 And we then check if there's a double treaty</p>	<p style="text-align: center;">Page 45</p> <p>1 with that country so that dividend tax can be 2 reclaimed.</p> <p>3 Then we check whether there's a 4 dividend credit advice from a third party 5 stating that the person has the shares in his 6 or her custodian account, and whether the 7 person had received dividends and paid -- and 8 whether tax has been -- dividend tax has been 9 withheld.</p> <p>10 Q I'm still here.</p> <p>11 A Okay. So then we compare whether 12 the dividend credit advice and the reclaim 13 form reconciled okay. And it's reconciled 14 whether the amount is claimed is correct and 15 also is -- and that the percentage is correct 16 according to the double taxation treaty in 17 existence.</p> <p>18 Then, the next step is to input 19 this information in the 3S system. In the 3S 20 system, we then find the dividends report 21 from the company ensuring that dividend has 22 been paid out by the company.</p> <p>23 Then you go to the screen FDU, 24 "Free of Danish Dividend Tax," and input the 25 information. After you've input this</p>

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<p>1 information, an FDU report -- again, "Free of 2 Danish Dividend Tax" -- is created in the 3 system.</p> <p>4 The report is then checked by Sven 5 who has input the information, plus another 6 set of eyes to check and reconcile with a 7 spreadsheet which is generated for all 8 reclaims. And after that has been done, the 9 amount can be stated for disbursement.</p> <p>10 And then the FDU report is checked 11 again to check the amounts to be disbursed. 12 Then the amount is entered into our general 13 accounting system, SAP38, and the amount is 14 released for payment, disbursement.</p> <p>15 Q Okay. Excellent. Thank you.</p> <p>16 So let's start with the field in 17 the form where it says, "Claim is made for 18 refund of Danish dividend tax in total DKK."</p> <p>19 Do you see that at the top?</p> <p>20 A Yes, yes.</p> <p>21 Q Okay. And the premise of that 22 space in the form is for the applicant to 23 declare the amount of dividend tax that was 24 withheld with respect to their shares in 25 Danish companies, correct?</p>	<p>1 A Yes. 2 Q And I believe you said that with 3 respect to that number, the person reviewing 4 the application would confirm that the 5 information on the dividend credit advice is 6 tallied to that figure. 7 Is that correct? 8 A Yes, that amount or amounts. 9 Because the amount up here could be a sum of 10 several amounts. 11 Q But to confirm that amount or 12 amounts, you relied on information contained 13 on the dividend credit advice, correct? 14 A Yes. 15 Q You also, I believe, testified that 16 the reviewer would consult 3S to obtain 17 information about the value input into this 18 field. 19 Is that correct? 20 MR. WEINSTEIN: Objection to form. 21 It misstates his testimony. 22 A What you check in 3S is that the 23 company has reported dividends, dividends 24 paid and dividends declared. 25 That's entered into 3S.</p>
<p style="text-align: center;">Page 48</p> <p>1 MR. WEINSTEIN: Can I just say, 2 Alan -- I'm sorry. I know my Danish is not 3 very sophisticated. I think he started the 4 answer by saying "ingen," which is probably 5 one of two words I know, and which is "no." 6 And then he explained, and I don't 7 think that was translated.</p> <p>8 THE INTERPRETER: Okay. So he was 9 saying no, but that was because I was asking 10 him exactly what information was in 3S. And 11 I repeated it.</p> <p>12 Q So just so I have this correct, the 13 review entailed confirming in 3S that the 14 company had declared the dividend for which 15 the refund is being claimed.</p> <p>16 Is that correct?</p> <p>17 A Yes, that is correct.</p> <p>18 Q Was 3S consulted for any other 19 purpose as part of this review?</p> <p>20 A No.</p> <p>21 Q The form says "Beneficial Owner," 22 and then it has a space to list the full 23 name.</p> <p>24 Do you see that?</p> <p>25 A Yes.</p>	<p style="text-align: center;">Page 49</p> <p>1 Q A reviewer would check that that 2 space was filled in, correct? 3 A Yes. 4 Q Did they do anything else with 5 respect to that field? 6 MR. WEINSTEIN: Objection to form. 7 A No -- well, because they checked 8 whether the name is the same as the names 9 stated in the dividend credit advice. 10 But that's all they checked. 11 Q Did the reviewer do anything to 12 independently verify the accuracy of the 13 statement that a particular named party was 14 the beneficial owner? 15 MR. WEINSTEIN: Objection to form. 16 A No. The beneficial owner declares 17 that he's the owner, and the instruction from 18 the custodian that is from a third party 19 stating that the person is the beneficial 20 owner. 21 Q What definition of "beneficial 22 owner" was applied by SKAT to determine 23 ownership for these purposes? 24 A That would be the beneficial owner 25 of the dividend that has the right to the</p>

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<p>1 dividend, and you could not hold the shares 2 for anybody else, for any other party. 3 That's as I understood what it 4 meant.</p> <p>5 Q Do you know that's what Sven 6 Nielsen -- do you know whether that's what 7 Sven Nielsen and Mr. Cramer understood the 8 definition of "beneficial ownership" was for 9 the period 2012 to 2015?</p> <p>10 A It's difficult for me to answer 11 that, but it's the general understanding in 12 the Danish tax agency.</p> <p>13 Q Was that definition written down in 14 any document, or policy, or procedure, for 15 purposes of withholding dividend tax refund 16 applications?</p> <p>17 A Well, it's in our legal guidelines 18 that stated what we considered to be the 19 beneficial owner. And it's also -- as far as 20 I know, it's stated in the double taxation 21 treaty.</p> <p>22 But if you want to do more 23 investigation into the concept of "beneficial 24 owner," you probably need a legal expert.</p> <p>25 Q What I'm interested in is knowing</p>	<p>1 what Mr. Nielsen and Mr. Cramer applied as 2 the definition of "beneficial ownership" in 3 reviewing dividend withholding tax refunds. 4 Were they provided with any 5 guidance, written or otherwise, about the 6 meaning of "beneficial ownership" for 7 purposes of approving these applications?</p> <p>8 MR. WEINSTEIN: Objection to form.</p> <p>9 A Under legal guidelines binding on 10 us as tax employees. And whether or not they 11 were aware of those guidelines, they were the 12 guidelines they had to apply.</p> <p>13 Q But you don't know one way or the 14 other whether they were provided with 15 guidance as to how to define "beneficial 16 ownership" for these purposes?</p> <p>17 MR. WEINSTEIN: Objection to form.</p> <p>18 Asked and answered.</p> <p>19 A No, I don't know.</p> <p>20 Q Are you familiar with the concept 21 of CumEx transactions?</p> <p>22 MR. WEINSTEIN: Objection to form.</p> <p>23 A Are you talking about the CumEx 24 scandal in Germany? So that's what I know 25 about it, at least.</p>
<p style="text-align: center;">Page 52</p> <p>1 Q When did you learn about the CumEx 2 scandal in Germany?</p> <p>3 THE INTERPRETER: Did you say 4 "when" or did you say "what?"</p> <p>5 Q When did you learn about it?</p> <p>6 A I think it was around August 15th.</p> <p>7 Q What's your understanding of the 8 CumEx scandal in Germany?</p> <p>9 MR. WEINSTEIN: Objection. And 10 that's his understanding of the CumEx fraud 11 in another country. It's not a subject under 12 the 30(b) (6) notice.</p> <p>13 I should also add that as you were 14 asking the question, Madam Reporter said that 15 it might be time for her to have a break.</p> <p>16 Q Okay. Why don't you answer this 17 question to the extent you know in your 18 individual capacity and then we can take a 19 break.</p> <p>20 A So briefly, what I understand about 21 the CumEx situation is that you circulate 22 borrowed shares. And in that connection, so 23 the real owner or the correct owner gets the 24 dividend, and the person who's borrowed the 25 shares gets a net dividend which is -- a</p>	<p style="text-align: center;">Page 53</p> <p>1 "dividend compensation" is what they call it. 2 And then this bank thinks that he 3 has got dividends. So they issue a dividend 4 compensation or a check compensation 5 certificate which he uses to reclaim the 6 dividend withheld.</p> <p>7 We don't have those rules in 8 Denmark, so it cannot be done in that way in 9 Denmark.</p> <p>10 That's my understanding of it.</p> <p>11 MR. SCHOENFELD: Okay. Why don't 12 we take a break now?</p> <p>13 VIDEO OPERATOR: Stand by. The 14 time is 8:08 a.m. New York time, and we are 15 going off the record.</p> <p>16 (Brief recess taken.)</p> <p>17 VIDEO OPERATOR: The time is 8:22 18 a.m. New York time, and we're back on record.</p> <p>19 Q Mr. Ekstrand, did the department 20 responsible for processing dividend refund 21 claims track the volume of refunds that were 22 paid?</p> <p>23 MR. WEINSTEIN: Objection.</p> <p>24 A What year are we talking about 25 here?</p>

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<p>1 Q 2012 to 2015.</p> <p>2 A Monthly reporting is done of income 3 and expenses or revenue taken in and 4 disbursements being made.</p> <p>5 So, in that way, it was checked.</p> <p>6 Q Do you know whether there were 7 specific approvals or reports concerning the 8 amount of dividend withholding tax that was 9 refunded during the period of 2012 to 2015?</p> <p>10 A Well, there are monthly approvals 11 of the accounts.</p> <p>12 Q Is there a legal requirement that 13 monthly approvals for disbursements be filed 14 within the agency?</p> <p>15 MR. WEINSTEIN: Objection. I'm not 16 sure what you mean by "a legal requirement."</p> <p>17 A As far as I remember, we have 18 accounting instructions requiring monthly 19 reporting of revenue and disbursement that 20 must be filed, that reporting being an 21 authority. Their accounting instructions 22 require that this authority files monthly 23 reporting stating revenue and disbursements, 24 meaning that there was accounting instruction 25 stating that, as an authority, they have to</p>	<p>1 file monthly reports stating revenue and 2 disbursements.</p> <p>3 Q Let's look at a document that's 4 been previously labeled or previously used as 5 Exhibit 3005. That should be in your binder.</p> <p>6 Do you have that in front of you?</p> <p>7 THE INTERPRETER: Yes, he has that.</p> <p>8 (Above-mentioned document marked 9 for Identification.)</p> <p>10 Q Have you seen this document before?</p> <p>11 A No, I don't remember having seen 12 that before.</p> <p>13 Q Okay. Do you recognize this as a 14 monthly report submitted by SAP38?</p> <p>15 A I just need to take a look at the 16 document.</p> <p>17 Q Sure. (Witness reviewing.)</p> <p>18 A All this looks like a balance sheet 19 memo and not the monthly reporting.</p> <p>20 Q It's called a "Final Accounting 21 Approval" for the period of July 2014, 22 correct?</p> <p>23 A Yes, that's correct.</p> <p>24 Q So what is this report meant to</p>
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<p>1 convey?</p> <p>2 A I haven't seen this memo before. I 3 haven't seen this document before or this 4 memo before, but it looks like reporting of 5 revenues and disbursements for the period of 6 a specific area or department.</p> <p>7 There's an increase from last year 8 and it's normal, when you compare periods 9 like that, and -- and you explain, and 10 there's an explanation, and it's -- it's been 11 issued by the head of Accounts 2.</p> <p>12 Q Do you know, from looking at this 13 document now, to whom it would have been 14 submitted?</p> <p>15 A Offhand, its reporting -- it's 16 reported by Dorthe Pannerup, and I would 17 imagine that it's through her deputy 18 director, but that's a guess.</p> <p>19 I don't know for certain.</p> <p>20 Q What is a "plausibility check?"</p> <p>21 THE WITNESS: Plausibility or 22 possibility?</p> <p>23 MR. WEINSTEIN: Plausibility.</p> <p>24 A It's a check that's made in 25 accounts -- in accounting, and it has, when</p>	<p>1 you look at whether it's plausible, whether 2 it's -- it's likely that it's correct that 3 is -- that it's correct as stated.</p> <p>4 Q Is it required within SKAT to 5 perform plausibility checks for all 6 accounting approvals?</p> <p>7 A Yes, it is a requirement because we 8 have to make true and fair accounts to submit 9 to the accounts.</p> <p>10 Q Do you know whether a requirement 11 was introduced?</p> <p>12 A I think that's a very 13 common -- normal requirement within financial 14 statements for accounting, and we are subject 15 to these requirements also in the ministry.</p> <p>16 Q As part of the plausibility 17 check -- I apologize.</p> <p>18 Were you still speaking?</p> <p>19 MR. WEINSTEIN: Hold on, Alan.</p> <p>20 A Not in the Ministry. But as an 21 authority, a government authority, you have 22 to follow those rules also of public 23 authority.</p> <p>24 Q As part of a plausibility check, 25 the memo says that "at the end of July 2014,</p>

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<p>1 correct?</p> <p>2 A Yes.</p> <p>3 Q And among the taxes that SKAT</p> <p>4 collects, it collects dividend withholding</p> <p>5 tax, correct?</p> <p>6 A Yes.</p> <p>7 Q And when SKAT pays out dividend</p> <p>8 withholding tax refunds, it uses tax revenues</p> <p>9 to make those payments, correct?</p> <p>10 MR. WEINSTEIN: Objection.</p> <p>11 A So when there is dividend</p> <p>12 withholding tax, then that is -- those are</p> <p>13 the funds you can have -- invest.</p> <p>14 Q So the money SKAT's seeking to</p> <p>15 recover in this case represents tax revenue</p> <p>16 wrongly paid out to claimants, correct?</p> <p>17 MR. WEINSTEIN: Objection to form.</p> <p>18 A To my knowledge, we have filed a</p> <p>19 suit to recover funds that we have wrongly</p> <p>20 paid out.</p> <p>21 MR. WEINSTEIN: Alan, I'll also</p> <p>22 just note that if you're asking about</p> <p>23 subjects 15 -- I'm sorry, 16 and 17 in the</p> <p>24 30(b) (6) notice, we had designated another</p> <p>25 witness as SKAT's witness on those subjects.</p>	<p>1 He's already testified.</p> <p>2 These questions are not within the</p> <p>3 notice that we designated Mr. Ekstrand to</p> <p>4 cover.</p> <p>5 MR. SCHOENFELD: Okay. To the</p> <p>6 extent he knows the answer to these</p> <p>7 questions, he can answer them in his</p> <p>8 individual capacity.</p> <p>9 Q Mr. Ekstrand, there -- during the</p> <p>10 relevant time period, there were different</p> <p>11 ways to obtain a reclaim of dividend</p> <p>12 withholding tax, correct?</p> <p>13 A Yes.</p> <p>14 Q There was something called the</p> <p>15 "bank scheme," right?</p> <p>16 THE INTERPRETER: Excuse me? What,</p> <p>17 sir?</p> <p>18 Q There was something called the</p> <p>19 "bank scheme?"</p> <p>20 A Yes.</p> <p>21 Q And then there was something called</p> <p>22 the "form scheme," right?</p> <p>23 A Yes.</p> <p>24 Q And the "form scheme" just means</p> <p>25 that the party requesting the reclaim</p>
<p style="text-align: center;">Page 72</p> <p>1 completes the form that we looked at earlier,</p> <p>2 correct?</p> <p>3 MR. WEINSTEIN: Objection.</p> <p>4 A In order to be -- to be part of the</p> <p>5 form scheme, we -- you have to fill out the</p> <p>6 form that I referred to earlier and attach</p> <p>7 relevant documentation.</p> <p>8 Q And that form had to be submitted</p> <p>9 to SKAT, correct?</p> <p>10 A Yes.</p> <p>11 Q The taxpayer couldn't submit that</p> <p>12 form to some other part of the Danish</p> <p>13 government, right?</p> <p>14 A SKAT is the relevant recipient of</p> <p>15 that form.</p> <p>16 Q The claimant couldn't submit that</p> <p>17 form to the issuer of the securities, right?</p> <p>18 A No.</p> <p>19 Q And after receiving the form, SKAT</p> <p>20 makes a decision about whether or not to pay</p> <p>21 the refund, right?</p> <p>22 A Once the form has been received,</p> <p>23 checks are made to see that the conditions</p> <p>24 for receiving payment are met before payment</p> <p>25 is made.</p>	<p style="text-align: center;">Page 73</p> <p>1 Q And SKAT is the agency that makes</p> <p>2 that decision whether to pay the refunds,</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q There's no other part of the Danish</p> <p>6 government that can approve these refunds,</p> <p>7 right?</p> <p>8 A No.</p> <p>9 Q VP Securities can't provide the</p> <p>10 refund, right?</p> <p>11 A I'm not sure I understand the</p> <p>12 question.</p> <p>13 Q So I think you testified that in</p> <p>14 order to get a refund of dividend withholding</p> <p>15 tax, the application needs to be submitted to</p> <p>16 SKAT, correct?</p> <p>17 A Yes.</p> <p>18 Q And so am I correct that</p> <p>19 VP Securities is not itself able to pay a</p> <p>20 refund out to a shareholder?</p> <p>21 Is that right?</p> <p>22 A Correct.</p> <p>23 Q And a U.S. pension plan owning</p> <p>24 shares of a Danish company couldn't require</p> <p>25 that company to pay its dividend on a gross</p>

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<p>1 Q Are the guidelines you're referring 2 to defining the concept of "beneficial 3 ownership" written down somewhere? 4 A Yes. It is in our legal 5 guidelines.</p> <p>6 Q In SKAT's legal guidelines?</p> <p>7 A Yes.</p> <p>8 Q Is SKAT's position that it paid 9 refunds in error?</p> <p>10 MR. WEINSTEIN: Objection.</p> <p>11 Are you asking about SKAT's legal 12 position in the lawsuit? Which is not a 13 proper question for Mr. Ekstrand.</p> <p>14 MR. SCHOENFELD: I'm asking about 15 SKAT's position with respect to these 16 refunds, which it has canceled independent of 17 this lawsuit.</p> <p>18 MR. WEINSTEIN: Objection to form.</p> <p>19 THE INTERPRETER: So which part of 20 the question --</p> <p>21 MR. WEINSTEIN: Do you want to hear 22 the question?</p> <p>23 THE INTERPRETER: No.</p> <p>24 MR. WEINSTEIN: Can you restate the 25 question, Alan?</p>	<p>1 MR. SCHOENFELD: Sure.</p> <p>2 Q Is SKAT's position that it paid 3 refunds in error?</p> <p>4 A So sitting here today, we can see 5 that, upon review, we have had to recall a 6 number of decisions made. And this is based 7 on information we have received when we have 8 written in full that we have been the victims 9 of fraud.</p> <p>10 As we have become aware of this, we 11 have started an investigation. We may have 12 been made -- it may have been wrongfully 13 made.</p> <p>14 Q And so when a refund is wrongfully 15 made in this context or any context, can the 16 recipient of an erroneous refund pay it back 17 to SKAT?</p> <p>18 A Yes, he or she can, but it is not 19 entitled to do so.</p> <p>20 Q If a taxpayer does, they'd be 21 making a tax payment back to SKAT, correct?</p> <p>22 MR. WEINSTEIN: Objection, 23 objection to form. And if we are now 24 talking, Alan, about the enforcement of -- of 25 revocations, that is a topic that the judge</p>
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<p>1 specifically denied as a 30(b) (6) topic.</p> <p>2 MR. SCHOENFELD: I can assure you 3 that we are not.</p> <p>4 MR. WEINSTEIN: Well, it sounds 5 like it to me, so I do not think these are 6 appropriate questions for the witness in his 7 capacity as a 30(b) (6) witness.</p> <p>8 Q Well, so in your individual 9 capacity, you can answer the question, if a 10 taxpayer makes a payment back to SKAT whether 11 they're making that payment -- whether that 12 payment is a tax payment?</p> <p>13 MR. WEINSTEIN: No, objection.</p> <p>14 This is not within the scope of him as an 15 individual -- this is certainly beyond the 16 scope of 30(b) (6) and you don't get to go 17 around the court's ruling by saying, "Well, 18 just give it to me in your personal 19 capacity." He's not here in his personal 20 capacity to talk about whether things are tax 21 revenue.</p> <p>22 MR. SCHOENFELD: I'm not asking 23 about questions about the clause in Topic 21. 24 I'm asking, as a general matter, when 25 somebody pays back refunded taxes because</p>	<p>1 they got more of a refund than they were 2 entitled to, whether they were paying SKAT 3 back taxes.</p> <p>4 MR. WEINSTEIN: Objection. He is 5 not the relevant witness for this question. 6 You're asking him to --</p> <p>7 MR. SCHOENFELD: Then he can answer 8 it in his individual capacity.</p> <p>9 MR. WEINSTEIN: But he's not an 10 individual witness on that issue.</p> <p>11 MR. SCHOENFELD: He's an individual 12 witness on any issue that he has personal 13 knowledge of. So if he has personal 14 knowledge of this, he can answer the 15 question.</p> <p>16 MR. WEINSTEIN: Objection. And 17 you're asking a very generic question in any 18 situation? Regardless of the circumstances, 19 you want him to define if someone is 20 returning something and it's defined as tax 21 revenue?</p> <p>22 It sounds like a legal question 23 without any facts to go along with it, and 24 he's not here to determine that.</p> <p>25 Q When someone concludes -- when a</p>

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<p>1 tax payer concludes that he has been refunded 2 more than he has been entitled to, and he 3 remits payment to SKAT, is he returning tax 4 money to SKAT?</p> <p>5 MR. WEINSTEIN: Objection. You 6 just asked him a question that could have one 7 thousand just different circumstances to it. 8 Just not an appropriate question 9 for this witness.</p> <p>10 MR. SCHOENFELD: Well, why don't 11 you let him answer if he can?</p> <p>12 MR. WEINSTEIN: Because he's not 13 here -- he's not here in any capacity to 14 answer that question, either individual or as 15 a 30(b) (6) witness.</p> <p>16 MR. SCHOENFELD: Are you directing 17 him not to answer the question?</p> <p>18 MR. WEINSTEIN: Mr. Ekstrand, if -- 19 certainly as a 30(b) (6) witness, I'm 20 directing him not to answer that question.</p> <p>21 MR. SCHOENFELD: Okay. So I'm 22 going to be clear. This is in his capacity 23 as a fact witness.</p> <p>24 Q Mr. Ekstrand, can you answer that 25 question?</p>	<p>1 THE INTERPRETER: Can you restate 2 the question, please? 3 MR. SCHOENFELD: Sure. 4 Q When someone -- when a taxpayer 5 concludes that he has been refunded more than 6 he's entitled to, and he remits payment to 7 SKAT, is he returning tax money to SKAT?</p> <p>8 MR. WEINSTEIN: Objection to form. 9 A There seems to be speculation, I 10 think. But in this area, we, as part of the 11 Danish authorities, do not have the -- do not 12 have legal grounds to reclaim this money. 13 That means that if money is repaid, 14 it is not -- it will not be defined as taxes 15 due. In order to collect taxes, there has to 16 be -- there have to be taxes due. Since 17 these are not taxes due, that is not 18 something that we can collect. 19 Nevertheless, it is possible to 20 repay the money. 21 Q Okay. Focusing on the period 22 2012 -- so we're shifting gears here. So 23 we're focusing on the period 2012 to 2015. 24 Describe to me the process for 25 Danish corporations' payment of dividend</p>
<p>1 withholding tax.</p> <p>2 THE INTERPRETER: I'm sorry. Can I 3 hear the last part of what you said? 4 "Describe for me the process of" --</p> <p>5 Q For Danish companies' payment of 6 dividend withholding tax?</p> <p>7 A So first of all, the company needs 8 to decide that they are going to pay out part 9 of their profits as dividends. They do that 10 by convening a general meeting.</p> <p>11 At the general meeting, they then 12 make a decision whether or not to pay 13 dividends. Once the decision is made at the 14 meeting, then the process is that the 15 shareholders, a few days after, will receive 16 dividends. And that is done in the way that 17 we discussed earlier, that a company sets 18 aside some money with the bank.</p> <p>19 What happened is that VP, based on 20 who the owners of the shares are as of the 21 date of the general meeting, there will be a 22 record date which is two days later, and then 23 this will be recorded, who the owners are and 24 who will receive the dividends. And this 25 will then be paid to them the day after or</p>	<p>1 the day after that. 2 Subsequently, the VP will do the 3 calculations and they will then submit that 4 to the company so that the company knows how 5 much are covered by 27 percent withholding 6 tax, which is one tax bracket. 7 Once that statement is made by VP 8 about the allocation of dividends, then they, 9 based on that, send a form to -- sorry, just 10 one second -- based on that, they submit 11 documentation of their allocation of 12 dividends. And as -- and that could be done 13 in two ways; either you'd fill out a form or 14 you'd use a self-service option online. 15 If you choose to fill out a form, 16 you then submit the form. You send the form 17 to SKAT, and this will then be entered into 18 the system by Accounting 2 into the 3S 19 system. 20 This will be done up until July 1, 21 2013. After that, entering this information 22 into the system becomes mandatory to do 23 yourself. 24 However, there was a transition 25 period until January 1, 2014. Once you use</p>

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<p>1 the self-service facilities online, the 2 information first goes to an intermediate 3 storage facility, and then, from there, on to 4 3S.</p> <p>5 So either way, whether you use a 6 form or do the self-service option, they end 7 up in the same place in 3S. And dividends 8 are proposed paid in the middle of April. 9 They have until the end of May to 10 get information to SKAT.</p> <p>11 Q So during the same time period, is 12 it the payer of the dividend that's 13 responsible for paying dividend taxes?</p> <p>14 A It is the company paying the taxes 15 to us.</p> <p>16 Q And is it also the payer of the 17 dividend that's -- sorry. Okay. So -- so 18 the company pays the taxes.</p> <p>19 Is that the company that also 20 withholds the taxes from the issued dividend?</p> <p>21 A So that company pays dividends 22 based on information from VP. And based on 23 the information from VP, then the total tax 24 amount will be calculated.</p> <p>25 Because, as a rule, the company</p>	<p>1 does not know how much tax to withhold. They 2 only know how much dividend to pay out. 3 Q Okay. During the time period 2012 4 to 2015, did SKAT have a processing place to 5 verify whether Danish companies withheld the 6 correct amount of dividend tax?</p> <p>7 A No, we have not had a specific 8 place making it possible to verify.</p> <p>9 Q During the period -- well, let me 10 just say I'm talking about the period of 2012 11 to 2015 now.</p> <p>12 What system stored information in 13 SKAT about dividends paid by Danish companies 14 and dividend tax withheld by Danish 15 companies?</p> <p>16 MR. WEINSTEIN: Objection to form. 17 THE INTERPRETER: And the initial 18 part of your question was -- I heard stored 19 information about dividends paid and dividend 20 tax withheld.</p> <p>21 I didn't hear the first part of 22 your question.</p> <p>23 Q What system within SKAT stored 24 information?</p> <p>25 THE INTERPRETER: Okay.</p>
<p style="text-align: center;">Page 88</p> <p>1 A This was the system 3S. 2 Q And what data sources does 3S pull 3 from? 4 A So 3S is a reporting system just 5 receiving information about dividends. It is 6 the same system used by the company to report 7 their taxes. 8 This is a reporting system. 9 Q So did information in 3S concerning 10 dividends issued and dividend withholding tax 11 paid come directly from the company that 12 issued the dividend? 13 A So the system 3S receives the 14 information directly from the companies. 15 Q So Danish corporations can have tax 16 liabilities, right, tax that they owe to 17 SKAT? 18 A Yes. 19 Q And they can also have credits or 20 refunds, right? 21 A Yes. A company will have an 22 account where all issues regarding to taxes, 23 whether it's money owed or money to be 24 refunded to them. But that will be handled 25 within that account.</p>	<p style="text-align: center;">Page 89</p> <p>1 Q And within that account, 2 liabilities offset or may offset tax credits 3 or refunds, right? 4 A Correct. 5 Q And the company just pays the final 6 balance at the appropriate date? 7 A There are -- there are various 8 deadlines as regards payment involved here. 9 I'm not completely sure, but I think that you 10 have to pay the withholding tax ten days 11 after you have -- you have -- the dividends 12 are paid. 13 But if you do not, then it will go 14 from the account and it will carry interest. 15 And then, at some point, the money will be 16 collected through the Danish authorities and 17 even through collections. 18 Q Is it accurate that Danish 19 companies pay their taxes according to a 20 balance principle? 21 A Yes, you could say that in part. 22 They have to -- they have to make payment 23 deadlines. But if they do not, then it is 24 based on the balance. 25 And then, as I just described, then</p>

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<p>1 Q So let's focus on the period 2012 2 to 2015.</p> <p>3 A So within the period of 2012 to 4 2015, their verification was included in 5 the -- this was -- sorry. This -- within 6 this period, this was included in the 7 processing of the application.</p> <p>8 A very important document in this 9 context is from the custodian. The custodian 10 is independent of the client and therefore, 11 an independent third party.</p> <p>12 Therefore, you would expect to get 13 valid information from such a party, and it 14 is quite standard within Danish tax law that 15 we gather information from 16 third -- independent third parties. And here 17 we have information from a third party.</p> <p>18 And so, everything together, the 19 application, the form, the tax certificate, 20 that information from the third party would, 21 at the time, be used to document your claim.</p> <p>22 Q So SKAT relies on account 23 statements from independent third parties to 24 verify taxpayers' ownership of shares in 25 Danish companies, correct?</p>	<p>1 MR. WEINSTEIN: Objection to form. 2 A So tax -- you said that a 3 Danish -- that SKAT relied on information 4 from third parties. 5 And what came next? 6 MR. WEINSTEIN: Objection. Can I 7 ask you to say it again, Alan? Because your 8 question was kind of specific. 9 Can you do it again? 10 MR. SCHOENFELD: Sure. 11 Q So SKAT relies on account 12 statements from independent third parties to 13 verify taxpayers' ownership of shares in 14 Danish companies, correct? 15 MR. WEINSTEIN: Object to the form. 16 A So this documentation has been 17 accepted to show that you own the shares 18 pertaining to the request for refund. 19 MR. WEINSTEIN: Alan, can I 20 just -- whenever it's convenient, we have 21 some dinner, and it's been -- we haven't had 22 a -- you know, a lunch-type break. 23 MR. SCHOENFELD: Sure. How long do 24 you want to take? 25 MR. WEINSTEIN: Take a 30-minute</p>
<p>1 break?</p> <p>2 MR. SCHOENFELD: Just hold on one 3 second, because I think we're trying to 4 figure out lunch.</p> <p>5 Hold on one second.</p> <p>6 VIDEO OPERATOR: Do you want to go 7 off record, Counsel?</p> <p>8 MR. SCHOENFELD: Yes, let's 9 go -- let's go off the record for this.</p> <p>10 VIDEO OPERATOR: Stand by. The 11 time is 11:32 a.m. New York time, and we're 12 going off the record.</p> <p>13 (Luncheon recess taken.)</p> <p>14 VIDEO OPERATOR: The time is 15 12:16 p.m. New York time and we're back on 16 record.</p> <p>17 Q Mr. Ekstrand, it's generally 18 understood within SKAT that shares in Danish 19 securities exist in dematerialized form.</p> <p>20 Is that right?</p> <p>21 A Yes.</p> <p>22 Q And dematerialized shares only -- 23 only exist in the books and records of 24 financial intermediaries, correct?</p> <p>25 A Yes. You do not have a</p>	<p>1 physical -- an actual document. 2 Q An investor verifies their 3 ownership of shares by reviewing a statement 4 from your financial intermediary, correct? 5 THE INTERPRETER: I think I 6 misunderstood the question. Can I ask you to 7 repeat? 8 MR. SCHOENFELD: Sure. 9 Q An investor verifies their 10 ownership of shares by reviewing a statement 11 from their financial intermediary, correct? 12 MR. WEINSTEIN: Objection to form. 13 A So, first and foremost, an 14 agreement is made to buy some shares. And 15 then, once the shares have been bought, then 16 they should appear with the custodian that 17 these shares are now in the possession of, 18 whatever company or investor. 19 Q Right. So we could have a broker 20 transfer a share from my account to your 21 account and that would happen electronically, 22 right? 23 MR. WEINSTEIN: Objection to form. 24 A Yes. 25 Q And if the share was no longer</p>

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<p style="text-align: right;">Page 142</p> <p>1 owner if you have hedged your purchase or 2 anything like that.</p> <p>3 Q And was that SKAT's position 4 between 2012 and 2015?</p> <p>5 MR. WEINSTEIN: Objection to form.</p> <p>6 A I have no idea.</p> <p>7 Q Well, let me -- let me rephrase the 8 question in case it was confusing.</p> <p>9 In the period 2012 to 2015, SKAT 10 didn't have any policy precluding an investor 11 from being the beneficial owner if the 12 investor had hedged its purchase.</p> <p>13 Is that correct?</p> <p>14 MR. WEINSTEIN: Objection to form.</p> <p>15 A No, nothing like that.</p> <p>16 Q Is that also true with respect to 17 investors who finance their purchases?</p> <p>18 MR. WEINSTEIN: Objection to form.</p> <p>19 A As the investor has entered into a 20 binding legal agreement on the purchase, 21 however he can pay for that purchase, we 22 have -- we have no opinion on that.</p> <p>23 THE INTERPRETER: Just hold on one 24 second.</p> <p>25 A As long as -- however you have</p>	<p style="text-align: right;">Page 143</p> <p>1 acquired the share, whether by hedging or 2 whether by whatever financing, that has 3 nothing to do with whether or not you are the 4 beneficial owner.</p> <p>5 Q When you buy yourself securities, 6 you understand that there's a trade date and 7 a settlement date, correct?</p> <p>8 A Yes.</p> <p>9 Q And what do each of those dates 10 represent?</p> <p>11 A So the trade date is the day the 12 security is traded. The settlement date is 13 the date that the -- that the deal is 14 finished, where the security is -- it comes 15 to your custodian.</p> <p>16 Q So on the trade date -- oh, I 17 apologize. Please go ahead.</p> <p>18 A Just -- the settlement date is the 19 day when the trade is final where the shares 20 go from one custodian to another.</p> <p>21 Q Okay. And on the trade date, does 22 anything happen other than an agreement being 23 entered into and confirmations exchanged?</p> <p>24 A Well, you could have payment on 25 that day, but I imagine that payment would</p>
<p style="text-align: right;">Page 144</p> <p>1 take place on the settlement date.</p> <p>2 Q Are any book entries made on the 3 trade?</p> <p>4 MR. WEINSTEIN: Objection to the 5 form.</p> <p>6 A Actually, I don't remember at this 7 time, but it is not registered with the 8 custodian. That is not until the settlement 9 date.</p> <p>10 That's when the shares move from 11 one to the other.</p> <p>12 Q Must the seller of the shares have 13 the shares on the trade date?</p> <p>14 MR. WEINSTEIN: Objection to form.</p> <p>15 A Not necessarily.</p> <p>16 Q To be entitled to a refund for a 17 dividend withholding tax, did SKAT require 18 there to be a certain number of days between 19 trade date and settlement date?</p> <p>20 A So no. But in order to be entitled 21 to dividend, you have to be the beneficial 22 owner and the -- the agreement has to be 23 made, at the latest, on the -- at the latest, 24 on the date of the general meeting.</p> <p>25 Q So if the shares are purchased on</p>	<p style="text-align: right;">Page 145</p> <p>1 or before the date of the annual general 2 meeting, the purchaser's entitled to the 3 dividend declared at that meeting.</p> <p>4 Is that right?</p> <p>5 THE INTERPRETER: So could you 6 repeat that?</p> <p>7 MR. SCHOENFELD: Yes.</p> <p>8 Q So if the shares are purchased on 9 or before the date of the annual general 10 meeting, the purchaser's entitled to the 11 dividend declared at that meeting.</p> <p>12 Is that right?</p> <p>13 MR. WEINSTEIN: Objection to form.</p> <p>14 A As long as a legal, binding 15 agreement has been made on the purchase and 16 payment, then yes.</p> <p>17 Q So if the trade date is before the 18 date of the annual general meeting?</p> <p>19 A That is not important as long as 20 he's the beneficial owner of the share on the 21 day of the general meeting.</p> <p>22 Q Was SKAT's understanding that if 23 the seller of shares receives a dividend on 24 the dividend payment date, it can pass that 25 dividend along to the purchaser?</p>